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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re Apple iPhone Antitrust Litigation

CASE NO. 4:11-cv-06714-YGR

**FURTHER JOINT CASE MANAGEMENT
STATEMENT**

DONALD R. CAMERON, *et al.*,

Plaintiffs,

v.

APPLE INC.,

Defendant.

CASE NO. 4:19-cv-03074-YGR

DATE: March 1, 2021
TIME: 9:30 a.m.
JUDGE: Hon. Yvonne Gonzalez Rogers
CTRM: 1 – 4th Floor

1 Plaintiffs in the related App Store actions, including Plaintiffs Robert Pepper, Stephen H.
 2 Schwartz, Edward W. Hayter, and Edward Lawrence, plaintiffs in *In re Apple iPhone Antitrust*
 3 *Litigation*, Case No. 4:11-cv-06714-YGR (collectively, “Consumer Plaintiffs”); Plaintiffs Donald R.
 4 Cameron and Pure Sweat Basketball, Inc., plaintiffs in *Cameron, et al. v. Apple Inc.*, Case No. 4:19-
 5 cv-03074-YGR (collectively, “Developer Plaintiffs”); and Defendant Apple Inc. (“Defendant,” and
 6 with Consumer Plaintiffs and Developer Plaintiffs, the “Parties”), by and through their respective
 7 counsel, hereby submit this Further Joint Case Management Statement in advance of the March 1,
 8 2021 Case Management Conference.

9 Unless otherwise stated herein, the Parties’ positions on the topics discussed in the initial
 10 Joint Case Management Statements, submitted on September 30, 2019, and Further Joint Case
 11 Management Statements submitted on January 6, 2020, July 28, 2020, and October 12, 2020, remain
 12 unchanged. *See* Consumer ECF Nos. 174, 196, 216, 244; Developer ECF Nos. 54, 82, 99, 127. Per
 13 this Court’s Standing Order in Civil Cases, ¶ 6, the Parties submit the following updates.

14 **1. MOTIONS**

15 There are no pending motions at this time. However, the Parties reserve the right to file
 16 discovery-related motions with Magistrate Judge Thomas S. Hixson, as directed by the Court, should
 17 certain outstanding discovery disputes remain unresolved.

18 The Consumer and Developer Plaintiffs have been working diligently toward filing their
 19 respective motions for class certification by June 1, 2021, and the Parties presently anticipate filing
 20 their motions for summary judgment (if any) by the Court-ordered deadline. Apple also reserves
 21 the right to raise by motion any matters posed by new developments in the law. Consumer and
 22 Developer Plaintiffs reserve the right to object to the filing of any such motions, including as to their
 23 timing.

24 **2. AMENDMENT OF PLEADINGS**

25 **a. Consumer Plaintiffs’ Amendments**

26 On September 17, 2020, the Court entered an order granting Consumer Plaintiffs leave to
 27 file a Third Amended Complaint, which was deemed filed on that date. Consumer ECF No. 229.
 28

1 Consumer Plaintiffs do not currently anticipate further amendments to their pleadings.

2 **b. Potential Amendment of Developer Plaintiffs' Complaint Relating to Foreign-**
 3 **Storefront-Related Transactions**

4 As noted in the previous Further Joint Case Management Statements, the Developer
 5 Plaintiffs and the Defendant identified a dispute relating to Apple's view that certain developer
 6 transactions "involv[e] trade or commerce with foreign nations" within the meaning of the Foreign
 7 Trade Antitrust Improvement Act, 15 U.S.C. § 6a ("FTAIA").

8 Developer Plaintiffs and the Defendant have conferred further with regard to this matter in
 9 an effort to identify a jointly acceptable accommodation in principle that would resolve the matter.
 10 Because this proposal may entail an agreed amendment of the Developer Plaintiffs' complaint, these
 11 Parties thought it best to alert the Court to this proposed resolution as they continue to work through
 12 the details.

13 *Developer Plaintiffs' Statement:* Developer Plaintiffs believe that further public
 14 developments and the ongoing review and analysis of Apple's productions in discovery may augur
 15 in favor of amendments to the current operative developer complaint. The Developer Plaintiffs
 16 continue to analyze these factors, and they are doing so in view of the possible amendment
 17 referenced in the previous paragraph. In the event the Developer Plaintiffs decide to seek to amend,
 18 they will first propose to the Defendant that it agree that the Developer Plaintiffs may file an
 19 amended complaint. Following further analysis of this matter, which has been informed by data and
 20 document productions to-date, the Developer Plaintiffs have sent a draft stipulation to the Defendant
 21 for its review. The Developer Plaintiffs look forward to continuing to work in good faith with Apple
 22 to determine if they can reach agreement on an agreed proposal that these Parties can submit to the
 23 Court for its consideration.

24 *Apple's Statement:* Developer Plaintiffs' complaint pleads no basis for claims concerning
 25 foreign transactions or for seeking discovery about such transactions. Nor could the Complaint be
 26 amended to plead a valid basis for such claims under the FTAIA (or under California law). As noted,
 27 however, Apple has agreed to discuss the possibility of entering into a stipulation with Developer
 28

1 Plaintiffs that would defer any litigation or discovery concerning transactions through Apple's
 2 foreign storefronts. Apple remains in discussions with Developer Plaintiffs to determine if such a
 3 stipulation is feasible.

4 **3. DISCOVERY**

5 *Plaintiffs' Statement:*

6 Consumer Plaintiffs served Apple with their first set of Requests for Production of
 7 Documents ("RFPs") on October 10, 2019, and Developer Plaintiffs served Apple with their first set
 8 of RFPs on October 17, 2019. Apple served responses and objections to those RFPs on November
 9 12, 2019 and November 18, 2019, respectively. On September 1, 2020 Consumer Plaintiffs served
 10 Apple with a second set of RFPs, and on October 1, 2020, Apple served responses and objections to
 11 those RFPs. To date, Apple has produced approximately 10 million pages in the Class Actions. On
 12 February 15, 2021 Apple stated that it had "completed its production of documents for the *Epic*
 13 *Games* litigation, although it continues to resolve certain third-party confidentiality responsibilities
 14 concerning a small volume of documents." It is unclear whether Apple has completed its production
 15 in the Class Actions. The Parties have met and conferred extensively, and continue to meet and
 16 confer, regarding Apple's responses and objections to Plaintiffs' RFPs. Consumer Plaintiffs and
 17 Developer Plaintiffs continue to review Apple's document production, including for purposes of
 18 identifying deficiencies.

19 On December 21, 2020, Consumer Plaintiffs served Apple with a first set of Requests for
 20 Admissions ("RFAs") and first set of Interrogatories. Apple served its responses and objections to
 21 Consumer Plaintiffs RFAs and Interrogatories on January 20, 2021. Consumer Plaintiffs are
 22 beginning the meet-and-confer process regarding Apple's responses and objections. As with other
 23 matters referenced in this report, if the Parties cannot resolve their differences via the meet-and-
 24 confer process, Consumer Plaintiffs will need to bring this matter to Magistrate Judge Hixson for
 25 resolution.

26 On December 24, 2020, Developer Plaintiffs served Apple with a first set of Interrogatories.
 27 Apple served its responses and objections to Developer Plaintiffs' Interrogatories on February 4,
 28

2021. The Developer Plaintiffs are in the process of analyzing Apple's responses and objections. As with other matters referenced in this report, if disputes arise as to these which the Developer Plaintiffs and the Defendant cannot resolve voluntarily, Developer Plaintiffs will bring any such matters to Magistrate Judge Hixson for resolution.

There are several outstanding issues between and among the Parties, as well as other issues involving non-party discovery, including but not limited to issues involving the following: (a) Apple's failure to timely produce documents prior to witness depositions; (b) Apple's failure to designate witnesses for certain of Plaintiffs' 30(b)(6) topics; and (c) Apple's refusal to produce documents to the Plaintiffs which it has produced to governmental bodies, including the House Judiciary Committee. In light of the serious, time-sensitive nature of these matters, including longstanding disputes, Plaintiffs have provided this non-exhaustive list. They will continue to meet and confer with Apple in good faith on all open issues.

Apple's Statement:

Fact discovery in the Class Actions is scheduled to close 60 days after a decision on class certification. There is no requirement that document productions to the Class Plaintiffs be complete by the close of discovery in the *Epic* matter. However, Apple's document productions in the Class Actions are complete except for a limited number of documents that are expected to be produced from custodians who were not deponents in the Class Actions or the *Epic* matter (and who are not custodians in the *Epic* matter).

Apple is mindful that discovery disputes should be taken to Magistrate Judge Hixson in the first instance. The specific issues raised by Class Plaintiffs are addressed below. There are no discovery issues in this litigation that require the Court's attention at this time.

a. Document review and depositions

Plaintiffs' Statement:

Class Plaintiffs have taken a combined 14 depositions of current or former Apple employees and one deposition of a third-party witness. Class Plaintiffs anticipate taking additional depositions

1 in the coming months, including, but not limited to, the deposition of one additional former Apple
2 employee, 30(b)(6) witnesses, and third-party witnesses.

3 Apple has repeatedly produced large volumes of documents from the files of witnesses after
4 their deposition already concluded, or just before their deposition began, even though Plaintiffs
5 repeatedly requested that Apple produce the documents sufficiently in advance of the depositions so
6 that Plaintiffs would have time to meaningfully review them. Class Plaintiffs continue to review
7 Apple's productions and reserve their rights to reopen the deposition of any witness whose
8 documents were not produced sufficiently in advance of the witness's deposition.

9 With respect to 30(b)(6) witnesses, Apple did not provide Plaintiffs with its designations
10 until January 24, 27, and 28, 2021. Yet, pursuant to Local Rule 30-1, the Developer Plaintiffs served
11 Apple with a letter identifying their 30(b)(6) topics on December 24, 2020, almost a month before
12 Apple began identifying its witnesses, and Consumer Plaintiffs served Apple with a letter identifying
13 those of Developers' topics (and of Epic's) to which Consumers joined, as well as additional 30(b)(6)
14 topics on January 12, 2021. Apple had no reason to believe that the Consumer Plaintiffs' (or Epic's)
15 designations would subtract from Developers' designations; and, of course, they did not. For one
16 witness, Apple provided the 30(b)(6) designation just four days prior to his deposition was scheduled
17 to begin. Class Plaintiffs have been prejudiced by Apple's late designations and reserve their rights
18 to reopen these depositions.

19 Apple has not designated 30(b)(6) witnesses for various topics and this failure, if not rectified
20 very soon, will also prejudice Class Plaintiffs. As with other matters referenced in this report, if the
21 Parties cannot resolve their differences via the meet-and-confer process, Plaintiffs will need to bring
22 this matter to Magistrate Judge Hixson for resolution.

23 *Apple's Statement:*

24 There is no rule or agreement among the Parties requiring the production of each custodian's
25 documents in advance of that custodian's deposition. Nevertheless, Apple endeavored to produce
26 each custodian's documents in advance of his or her deposition. Additionally, many of the
27 documents produced near in time to the depositions were in response to the expanded discovery
28

1 demanded by Epic—the Class Plaintiffs would not have received that discovery but for the *Epic*
 2 litigation. There is no basis for Class Plaintiffs to unilaterally reserve their “rights” to reopen
 3 depositions after the close of fact discovery.

4 With respect to the timing of Apple’s 30(b)(6) designations—Apple’s designations were not
 5 late. Developer Plaintiffs sent an informal letter on December 24, 2020 identifying 40 topics for
 6 30(b)(6) depositions, without any coordination with the other plaintiffs. Apple sent a letter on
 7 January 1, 2021 to Consumer Plaintiffs and Epic requesting that the plaintiffs coordinate their
 8 30(b)(6) topics, consistent with the Court’s order regarding coordination of discovery. The plaintiffs
 9 did not do so, and on January 12, Consumer Plaintiffs served their own 30(b)(6) topics, with Epic’s
 10 coming on January 11. Despite the lack of coordination, Apple worked diligently to respond to the
 11 numerous overlapping 30(b)(6) topics served by the plaintiffs.

12 Any allegation of prejudice to Class Plaintiffs from the timing of Apple’s 30(b)(6)
 13 designations is flatly contradicted by the fact that Class Plaintiffs did not even formally notice their
 14 30(b)(6) topics until January 31 and February 1, *after* Apple had already designated its witnesses.

15 As noted above, Apple has objected to a small number of Class Plaintiffs’ 30(b)(6) topics on
 16 the ground that they are overbroad or seek information better obtained from the millions of
 17 documents and billions of lines of transactional data produced by Apple. Apple designated witness
 18 for the vast majority of Class Plaintiffs’ 30(b)(6) topics.

19 **b. Production of documents produced to governmental agencies**

20 *Plaintiffs’ Statement:*

21 As noted in the previous Further Joint Case Management Statement, Plaintiffs have requested
 22 all documents Apple produced to governmental bodies, including the House Judiciary Committee
 23 pursuant to the Committee’s September 13, 2019 letter to Apple CEO Tim Cook. The Committee’s
 24 document requests are related to an investigation into competition in digital markets.¹ Apple has

25 _____
 26 ¹ See
 27 [https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/apple%20rfi%20-](https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/apple%20rfi%20-%20signed.pdf)
 28 [%20signed.pdf](https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/apple%20rfi%20-%20signed.pdf). The Committee released its “Majority Staff Report and Recommendations” on
 October 6, 2020. See, e.g., <https://int.nyt.com/data/documenttools/house-antitrust-report-on-big->

long indicated that it is willing to produce a limited set of documents it unilaterally deems relevant to this case,² and it has advised that it began to produce such documents with its May 7, 2020 tranche. Plaintiffs continue to seek production of all such requested documents, including documents that Apple has produced to the European Commission as part of the Commission's recently announced investigation into Apple's practices. Apple has objected to producing any documents concerning investigations by foreign governments or regulatory bodies. Nor has Apple indicated that it will produce even any additional documents that were cited in the House Judiciary committee's Majority Staff Report and Recommendations, which was released on October 6, 2020, though the report addresses many App Store-related issues. As with other matters referenced in this report, if the Parties cannot resolve their differences via the meet-and-confer process, Plaintiffs will need to bring this matter to Magistrate Judge Hixson for resolution.

Apple's Statement:

In response to Class Plaintiffs' document requests, Apple agreed to produce documents produced to the House Judiciary Committee that are relevant to the claims and defenses at issue in this litigation. Apple identified the categories of documents requested by the Committee that are relevant in a June 10, 2020 email, and in the intervening eight months, Plaintiffs have not taken any dispute on this issue to Magistrate Judge Hixson. In the meantime, Apple has produced the documents it agreed to produce.

c. Discovery from non-party recipients of document request subpoenas

Plaintiffs' Statement:

The Parties have served document subpoenas on various third parties, and production and meet-and-confers are ongoing. Further meet-and-confers may also be necessary. Consumer Plaintiffs and Developer Plaintiffs anticipate serving additional third-party subpoenas.

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tech/b2ec22cf340e1af1/full.pdf (last accessed Oct. 8, 2020).

² Apple and Plaintiffs have not yet agreed as to the scope of Apple's production.

Apple's Statement:

Apple reserves all rights with respect to the service of and response to document subpoenas of third parties.

d. Data discovery*Plaintiffs' Statement:*

Apple shipped its transactional data to Plaintiffs on January 15, 2021. Plaintiffs' experts continue to analyze the data in preparation for Plaintiffs' upcoming motions for class certification.

On Feb. 11, 2021, counsel for Class Plaintiffs (and Epic) deposed an Apple 30(b)(6) witness with regard to certain questions regarding, among other topics, Apple's transactional data, including the production referenced above. Analysis of the data, in conjunction with Apple's deposition testimony and other representations, is ongoing. One apparent deficiency in Apple's data production is that (with minor exceptions), it inexplicably does not include any transactions post-dating October 1, 2019, which is more than fifteen months prior to the date on which the data were produced. As Apple knows, the actions, policies, and practices of which the Class Plaintiffs complain are ongoing. Thus, for example, the Developer Plaintiffs' RFP No. 69, seeking transactional documents and data, specifies that the Developer Plaintiffs request covered material for the period "from YOUR App Store's inception through the date of judgment in this matter." Consumer Plaintiffs' RFP No. 47 likewise seeks transactional data "through the date of judgment in this matter." Throughout the lengthy meet-and-confer process regarding these RFPs, Apple never once objected to producing transactions post-dating October 1, 2019, nor did Apple indicate at any point that it would arbitrarily limit its data production in this fashion. To the extent Apple mentioned a "collection cut-off date of September 30, 2019," it did so in boilerplate objections to a separate Consumer Plaintiff RFP (RFP No. 53) that has nothing to do with Apple's transactional data or the RFPs requesting its production.³ Class Plaintiffs may identify further deficiencies as their analysis of the transactional data proceeds.

³ When Apple attempted to impose its own arbitrary collection cut-off date of September 30, 2019 to the documents requested by Consumer Plaintiffs' RFP No. 53, Consumer Plaintiffs objected in an October 21, 2020 meet-and-confer letter that "Apple cannot unilaterally pick a document collection cut-off date." Furthermore, Magistrate Judge Hixson ultimately ordered Apple to produce

As with other matters referenced in this report, if the Parties cannot resolve any differences via the meet-and-confer process, Plaintiffs will need to bring them to Magistrate Judge Hixson for resolution.

Apple's Statement:

After many months of Class Plaintiffs changing and expanding their requests for transactional data, Magistrate Judge Hixson brought finality to the parameters of Apple's transactional data production. Apple worked to produce that data as quickly as it could, beating its estimated production date by a week. This data (and Apple documents) were gathered in accordance with "Apple's collection cut-off date of September 30, 2019," which cut-off was stated in Apple's amended responses to Consumer Plaintiffs' second set of Requests for Production on November 2, 2020. This is a logical collection cut-off because it is the date of Developers' consolidated complaint, and discovery into later activities and transactions is not relevant or proportional to Developers' claims (or to Consumers' claims, which were first filed in 2011). Class Plaintiffs have all of the data they need to litigate their motions for class certification; another year of data will not add anything. Moreover, at Plaintiffs' request, Apple produced two samples—one consisting of 100,000 records, and another of 100 million records of data—in order to provide predictability and transparency about what the final production would contain. Neither of those samples contained data from after the collection cut-off date of September 2019. Plaintiffs never raised this issue as a concern in the extensive discussions between the parties following production of these samples. It is too late to do so now.

4. SETTLEMENT AND ADR

The Parties mediated before the Hon. Layn Phillips (U.S.D.J. Ret.) on June 30, 2020. Certain follow-up discussions have occurred. The Parties have been unable to resolve either matter thus far; however, the Parties expect to continue to engage in further settlement discussions as appropriate.

5. RELATED CASES

On August 19, 2020 the Court related *Epic Games, Inc. v. Apple Inc.*, N.D. Cal. No. 20-cv-_____, documents responsive to RFP No. 53 and did not limit Apple's production to documents dated prior to Apple's arbitrary September 30, 2019 cut-off.

05640, to the Developer case. Developer ECF No. 107.

On November 2, 2020, the Court related *Pistacchio v. Apple Inc.*, N.D. Cal. No. 3:20-cv-0734, to the Consumer case. Consumer ECF No. 260.

On January 8, 2021, the Court related *SaurikIT, LLC v. Apple Inc.*, N.D. Cal. No. 20-cv-08733, to the Consumer case. Consumer ECF No. 359.

Dated: February 22, 2021

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ECF SIGNATURE ATTESTATION

In accordance with Local Rule 5-1, the filer of this document hereby attests that the concurrence of the filing of this document has been obtained from the other signatories hereto.

Dated: February 22, 2021

/s/ Rachele R. Byrd

RACHELE R. BYRD

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